

**Introduced by Senator Corbett**

February 26, 2009

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An act to amend Section 10139.5 of the Insurance Code, relating to structured settlements.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 510, as introduced, Corbett. Structured settlements: payment transfers.

Existing law provides that no direct or indirect transfer of structured settlement payment rights is effective unless the transfer has been approved in advance in a final court order based on certain written court findings.

This bill would provide that every application for approval of a transfer of structured settlement payment rights shall contain certain specified information.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 10139.5 of the Insurance Code is
- 2 amended to read:
- 3 10139.5. (a) A direct or indirect transfer of structured
- 4 settlement payment rights is not effective and a structured
- 5 settlement obligor or annuity issuer is not required to make any
- 6 payment directly or indirectly to any transferee of structured
- 7 settlement payment rights unless the transfer has been approved
- 8 in advance in a final court order based on express written findings
- 9 by the court that:

1 (1) The transfer is in the best interest of the payee, taking into  
2 account the welfare and support of the payee's dependents.

3 (2) The payee has been advised in writing by the transferee to  
4 seek independent professional advice regarding the transfer and  
5 has either received that advice or knowingly waived that advice  
6 in writing.

7 (3) The transferee has provided the payee with a disclosure form  
8 that complies with Section 10136 and the transfer agreement  
9 complies with Sections 10136 and 10138.

10 (4) The transfer does not contravene any applicable statute or  
11 the order of any court or other government authority.

12 (5) The payee reasonably understands the terms of the transfer  
13 agreement, including the terms set forth in the disclosure statement  
14 required by Section 10136.

15 (6) The payee reasonably understands and does not wish to  
16 exercise the payee's right to cancel the transfer agreement.

17 *(b) Every application for approval of a transfer of structured*  
18 *settlement payment rights shall include all of the following:*

19 *(1) The payee's name, address and age.*

20 *(2) The payee's marital status, and if married or separated, the*  
21 *name of the payee's spouse.*

22 *(3) The names, ages, and place or places of residence of the*  
23 *payee's minor children or other dependents, if any.*

24 *(4) The payee's monthly income and sources of income, and, if*  
25 *presently married, the monthly income and sources of income of*  
26 *the payee's spouse.*

27 ~~(b)~~

28 *(c) Following a transfer of structured settlement payment rights*  
29 *under this article:*

30 (1) The structured settlement obligor and the annuity issuer  
31 shall, as to all parties except the transferee, be discharged and  
32 released from any and all liability for the transferred payments.

33 (2) The transferee shall be liable to the structured settlement  
34 obligor and the annuity issuer if the transfer contravenes the terms  
35 of the structured settlement for the following:

36 (A) Any taxes incurred by those parties as a consequence of the  
37 transfer.

38 (B) Any other liabilities or costs, including reasonable costs  
39 and attorney's fees, arising from compliance by those parties with

1 the order of the court or arising as a consequence of the transferee's  
2 failure to comply with this article.

3 (3) Neither the annuity issuer nor the structured settlement  
4 obligor may be required to divide any periodic payment between  
5 the payee and any transferee or assignee or between two, or more,  
6 transferees or assignees.

7 (4) Any further transfer of structured settlement payment rights  
8 by the payee may be made only after compliance with all of the  
9 requirements of this article.

10 ~~(e)~~

11 ~~(d)~~ (1) An application under this article for approval of a  
12 transfer of structured settlement payment rights shall be made by  
13 the transferee and brought in the county in which the payee resides.

14 (2) Not less than 20 days prior to the scheduled hearing on any  
15 application for approval of a transfer of structured settlement  
16 payment rights under this article, the transferee shall file with the  
17 court and serve on all interested parties a notice of the proposed  
18 transfer and the application for its authorization, and shall include  
19 the following with that notice:

20 (A) A copy of the transferee's application.

21 (B) A copy of the transfer agreement.

22 (C) A listing of each of the payee's dependents, together with  
23 each dependent's age.

24 (D) A copy of the disclosure required in subdivision (b) of  
25 Section 10136.

26 (E) A copy of the annuity contract.

27 (F) A copy of any qualified assignment agreement.

28 (G) A copy of the underlying structured settlement agreement.

29 (H) Notification that any interested party is entitled to support,  
30 oppose, or otherwise respond to the transferee's application, either  
31 in person or by counsel, by submitting written comments to the  
32 court or by participating in the hearing.

33 (I) Notification of the time and place of the hearing and  
34 notification of the manner in which and the time by which written  
35 responses to the application must be filed, which may not be less  
36 than 15 days after service of the transferee's notice, in order to be  
37 considered by the court.

38 ~~(d)~~

39 (e) All court costs and filing fees shall be paid by the transferee.

40 ~~(e)~~

1     (f) No later than the time of filing the petition for court approval,  
2     the transferee shall advise the payee of the payee's right to seek  
3     independent counsel and financial advice in connection with the  
4     transferee's petition for court approval of the transfer agreement,  
5     and shall further advise the payee that if the payee retains counsel,  
6     a licensed certified public accountant, or a licensed actuary in  
7     connection with a petition for an order approving the transfer  
8     agreement, that the transferee shall pay the fees of the payee's  
9     counsel, accountant, or actuary, regardless of whether the transfer  
10    agreement is approved, and regardless of whether the attorney,  
11    accountant, or actuary files any document or appears at the hearing  
12    on the application for transfer, in an aggregate amount not to  
13    exceed one thousand five hundred dollars (\$1,500). The transferee's  
14    accountant, counsel, or actuary may not advise the payee.

15    ~~(f)~~

16    (g) The court shall retain continuing jurisdiction to interpret and  
17    monitor the implementation of the transfer agreement as justice  
18    requires.